

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

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OCT 15 2009

Federal Communications Commission
Bureau / Office

In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Willow Creek, CA

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FILED/ACCEPTED

OCT 21 2009

Federal Communications Commission
Office of the Secretary

To: Chief, Audio Division, Media Bureau

PETITION FOR RULEMAKING (Hybrid Filing)

Miriam Media, Inc., ("Miriam"), hereby petitions the Commission for a rule making to amend Section 73.202(b) of the Commission's Rules as part of a contingent hybrid application and rule making proceeding as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Willow Creek, CA	253A	258A

Miriam is the Auction 70 winner for an unbuilt FM allotment station on Channel 253A at Willow Creek, California with pending application for a construction permit BNPH-20070406ABY. In a simultaneously filed ("hybrid") amendment to its pending application, Miriam has proposed the substitution of channel 254C1 at Willow Creek, California, the reallocation of Channel 254C1 from Willow Creek, California, to Loleta, California as its first local radio service, and the issuance of a construction permit for this new FM station.¹

¹ Because that relocation will occur by separate amendment, Miriam is not illustrating in the table above the change that will also be made to 73.202(b) substituting 254C1 for the previous 253A at Willow Creek, California and then reallocating it to Loleta, California. As part of that proposal Miriam has also sought the involuntary relocation of Stations KJNY(FM) at Ferndale, California from 256C1 to 249C1 at its present site, and KPOD-FM at Crescent City, California from 250C2 to 260C2 (modified from the previously proposed 259C2) at its present site. Such involuntary relocations would also need to be reflected in the

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To accommodate its hybrid FM community of license application, Miriam is proposing the allotment of FM Channel 258A, as a first local service at Willow Creek, California.

New Allotment at Willow Creek, California

As demonstrated in the attached engineering, Channel 258A may be allotted to Willow Creek consistent with all of the Commission's spacing and engineering criteria. While the proposed new allotment is a backfill replacement for the current 253A channel at Willow Creek, the Commission has previously ruled that such an FM backfill is permissible where the relocated facility is "unbuilt."²

Willow Creek has already been deemed a "Community" for allotment purposes for the currently allotted 253A FM facility, that is the subject of Miriam's pending hybrid application.³ Willow Creek is an unincorporated Census Designated Place (CDP), with a CDP Boundary defined by the US Census Bureau. However, the CDP boundary is exceedingly large, covering some 259 square kilometers in a mountainous and largely unpopulated wilderness area (a great deal of the CDP area lies within the Six Rivers National Forest). Nearly all of the population of Willow Creek (1,743 persons according to the 2000 census) reside within a narrow swath of land near the center of the CDP. This central

revised table of allotments. Miriam has reiterated its willingness to pay the reasonable and prudent expenses related to those involuntary relocations.

² See *Beatty & Goldfield, Nevada*, Report and Order in MB Docket 08-68, DA 09-413, released February 20, 2009, at ¶3 & n.5, citing *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004) (removal of unbuilt facilities does not present the same loss of service concerns as removal of a licensed station and backfill in such an instance does not violate the vacant allotment backfill policy).

³ See *Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Willow Creek, California)*, Report and Order in MM Docket 01-4, DA 01-1151, released May 4, 2001.

community of Willow Creek has a community boundary defined by Humboldt County and the Willow Creek Community Services District and can be found on the Humboldt County website.⁴

Generally, in FM allotment proceedings, a new “drop-in” allotment proposal must provide a 70 dBu coverage signal contour to the entire proposed community in accordance with Section 73.315(a) of the Rules. Given the size and terrain of the Willow Creek CDP, such a coverage showing would not be possible. However, the Commission has waived such requirement in instances where a petitioner can demonstrate substantial compliance with the general rule.⁵ In *Beatty and Goldfield, Nevada*, the Commission was confronted with a situation similar to the one presented by this proceeding. Therein, a proponent sought a new FM allotment to a community for which the Commission had granted a previous allotment. However, the petitioner finding itself unable to place a city-grade service contour over the large substantially rural and unpopulated CDP, submitted an engineering exhibit instead demonstrating that it would cover the entire town site and substantially all of its population

4 While Miriam had previously believed that the CDP was the only definition available for the well established but unincorporated community of Willow Creek, discussions with employees of the Willow Creek Service District and the Willow Creek Chamber of Commerce, and a review of the Humboldt County online map records for the Willow Creek Service District, and for city planning and development watershed impact studies, revealed county maps showing a specific community boundary much smaller than the CDP boundary and more proximate to the population centroids within the CDP. The Director of the Willow Creek Community Service District has estimated that 1,680 year round residents (about 95% of the CDP population) live within the defined service district boundaries, with such population swelling to 2,400 during the Summer months.

5 See *Beatty and Goldfield, Nevada*, Notice of Proposed Rulemaking in MMB Docket 08-68, DA 08-2273, released October 10, 2008 citing *Garro W. Ray*, 36 FCC 1038, 2 R.R. 2d 399 (1964); *KDEF Broadcasting Co.*, 30 FCC 635, 20 R.R. 2d 684 (1961); *Manchester Broadcasting Co.*, 24 FCC 199, 14 R.R. 219 (1958) (stating that it clear that the term ‘most distant residential section’ as used in Section 73.188(b)(2) refers to an urbanized residential area and not to essentially rural area which may exist within a city’s political boundaries).

(potential listeners) as defined by an alternative community boundary. The Commission found that the petitioner had demonstrated substantial compliance with Section 73.315(a) of the Rules.⁶

As shown in the attached Figure 1 map, the 70 dBu city grade contour of Miriam's proposed backfill drop in allotment at Willow Creek, California would cover all of the population contained in the CDP, as well as the entire principal community of Willow Creek as defined by Humboldt County and the Willow Creek Community Services District.⁷ Accordingly, as in *Beatty and Goldfield, Nevada*, the Commission should find that Miriam's proposal substantially complies with Section 73.315(a) of the Rules.

Statement of Intent

If the new FM Channel is allotted at Willow Creek on channel 258A, Miriam will participate in the FCC's auction for the new station. As an indication of its intentions, and in accordance with current FCC rules and policies, Miriam has submitted concurrently herewith a hybrid application on FCC form 301 (along with the requisite filing fee) for such Willow Creek station. If Miriam is successful in the auction process and upon grant of its application, Miriam will construct the facilities for the Willow Creek station.

⁶ See *Beatty and Goldfield, Nevada* citing *Cape Coral, Florida*, Federal Register, 47 FR 8362 (1982) (assigning a new allotment to the township of Cape Coral where Petitioner demonstrated substantial compliance with principal city grade coverage requirements by submitting documentation showing that principal community contour would cover populated areas).

⁷ Miriam is at a loss to explain how the proponent for the instant 253A allotment was able to show coverage of the entire 529 square kilometer CDP. Miriam can only assume that in that instance the proponent also based its allotment proposal on the Humboldt County and Willow Creek Service District defined community boundaries and coverage of all of the population of the CDP. Miriam has supplied a copy of the Willow Creek Service District Map with its attached engineering exhibit.

Conclusion

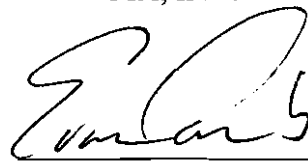
In view of the foregoing, the Commission should amend Section 73.202(b) as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Willow Creek, CA	253A	258A

Respectfully submitted,

MIRIAM MEDIA, INC.

By:



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Vice President & General Counsel

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October 15, 2009

DELAWDER COMMUNICATIONS, INC.

P.O. Box 1095
Ashburn, Virginia 20146-1095
(703) 299-9222

ENGINEERING REPORT

Willow Creek, CA, FM Channel 258A

**ENGINEERING STATEMENT
SUPPORTING WILLOW CREEK, CA 258A ALLOTMENT**

This proposal is part of the following set of rule-making and contingent applications, as well as involuntary changes:

New Willow Creek, CA, 258A

(This rule-making proposal; With corresponding application)

Willow Creek, CA, 253A to Loleta, CA, 254C1
(Contingent Minor change of new station awarded in FM Auction 70)

Ferndale, CA, 256C1 to Ferndale, CA, 249C1
(Involuntary "Show Cause" Order for KJNY)

Crescent City, CA, 250C2 to Crescent City, CA, 260C2
(Involuntary "Show Cause" Order for KPOD-FM)

Figure 1, attached, is a channel 258A separation study that demonstrates compliance with Section 73.207. (Any short-spacing that is to be removed by a contingent minor or involuntary change, above, is fully protected upon grant of the contingency.)

Figure 2, attached, is a map showing the reference site (also referred to as the "allotment site") at N 40° 57' 29"; W 123° 42' 23" (NAD 27). Also shown on Figure 2 is a predicted 70 dBu service contour (determined as a circular service with a 16 kilometer radius distance for the Class A proposal) from the reference site. As demonstrated by Figure 2, the reference site places a 70 dBu Service Contour over 100% of the Willow Creek Community. (The 70 dBu Service Contour also serves 100% of the population of the very large Willow Creek CDP¹.) Therefore, this proposal is in compliance with 47 CFR Section 73.203. (Note that the county map used to define this boundary is included as Figure 3.)

¹ Based on year-2000 Census Data, the Willow Creek CDP has a population of 1,743 persons.

Delawder Communications, Inc.
Alexandria, VA

FIGURE 1, Page 1 of 1
 Wednesday, October 07, 2009

BIA/Dataworld FM Spacing Study

Title: Willow Creek, CA 258A Refr

Channel: 258 A (99.5 MHz)

Database: FCC 10/6/2009 12:00:00 AM

Latitude: N 40° 57' 29.0"

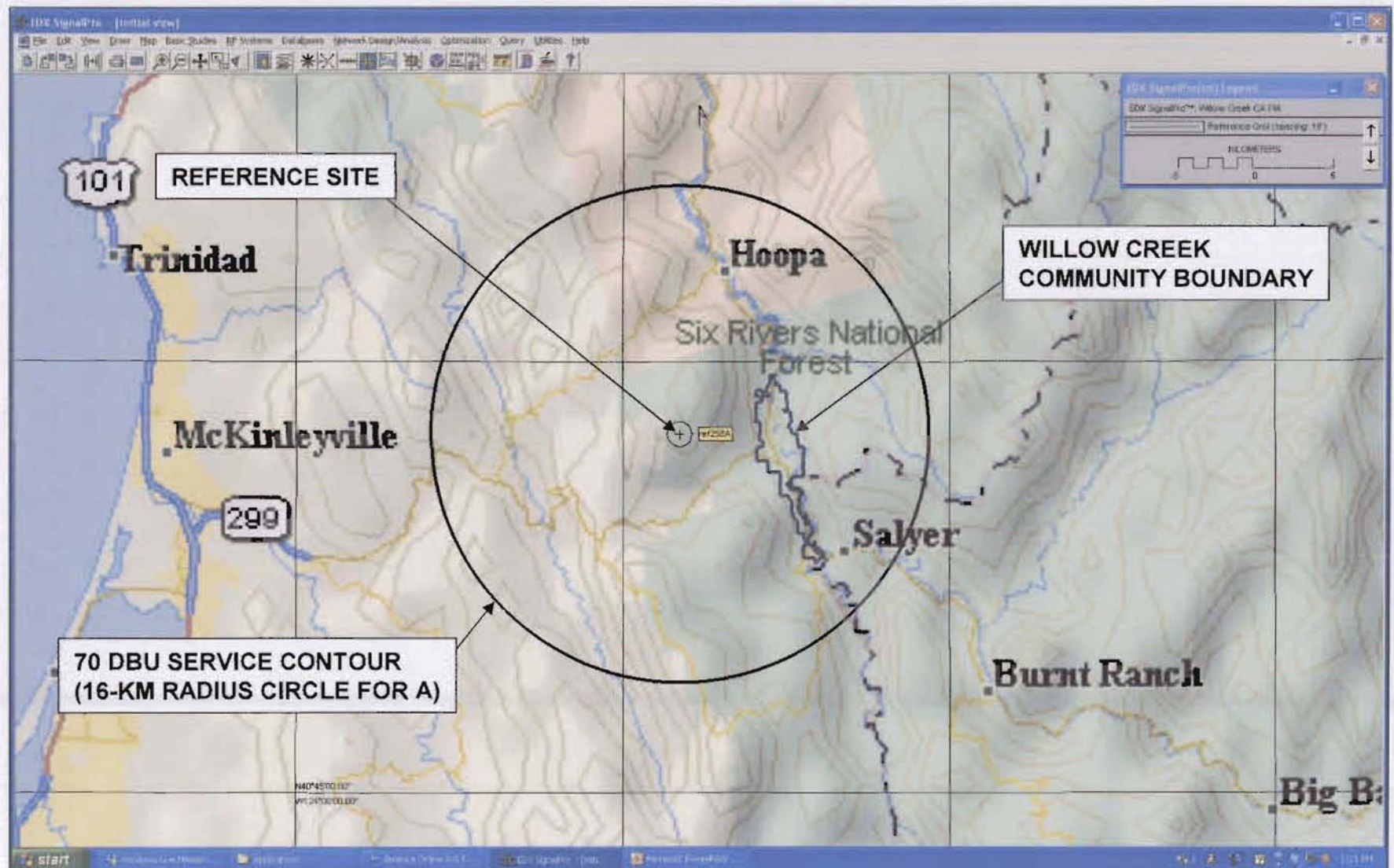
Longitude: W 123° 42' 23.0"

Safety Zone: 30.0 km

Call City of License	Auth	Licensee name St	FCC File Number	Chan Freq	HAAT(m) HMSL(m)	ERP (kW)	Latitude Longitude	Br-to -from	Dist (km)	Req (km)
FERNDAL	DEL	CA	RM-inv-11	256 C1 99.1			N 40° 30' 03.0" W 124° 17' 08.0"	224.0 43.6	70.51 -4.49	75.00 SHORT
KJNY FERNDAL	LIC	REDWOOD BROADCASTING COMPANY CA	BLH-19961202KB	256 C1 99.1	523.0 744.0	6 H 6 V	N 40° 30' 03.0" W 124° 17' 08.0"	224.0 43.6	70.51 -4.49	75.00 SHORT
KNNN SHASTA LAKE CITY	LIC	MAPLETON LICENSE OF REDDING, LLC CA	BLH-20010605AAC	257 C2 99.3	465.0 996.0	1.6 H 1.6 V	N 40° 39' 15.0" W 122° 31' 12.0"	108.3 289.1	105.6 -0.35	106.0 SHORT
KNNN SHASTA LAKE CITY	USE	MAPLETON LICENSE OF REDDING, LLC CA		257 C2 99.3			N 40° 37' 25.0" W 122° 16' 49.0"	106.7 287.7	126.0 19.97	106.0 CLEAR
KNTI LAKEPORT	USE	BICOASTAL MEDIA LICENSES, LLC CA		258 B 99.5			N 39° 07' 50.0" W 123° 04' 32.0"	165.0 345.4	209.9 31.93	178.0 CLEAR
Coordinates updated from LIC record BLH850711K										
KAGO-FM KLAMATH FALLS	USE	NEW NORTHWEST BROADCASTERS, LLC OR		258 C1 99.5			N 42° 12' 56.0" W 121° 47' 56.0"	48.0 229.2	211.7 11.67	200.0 CLOSE
KAGO-FM KLAMATH FALLS	LIC	NEW NORTHWEST BROADCASTERS, LLC OR	BLH-20050902ABI	258 C1 99.5	112.0 1439.0	60 H 60 V	N 42° 12' 56.0" W 121° 47' 51.0"	48.0 229.3	211.8 11.76	200.0 CLOSE

>> End of channel 258 A study <<

FIGURE 2: MAP SHOWING REFERENCE FACILITY SERVICE TO WILLOW CREEK, CA



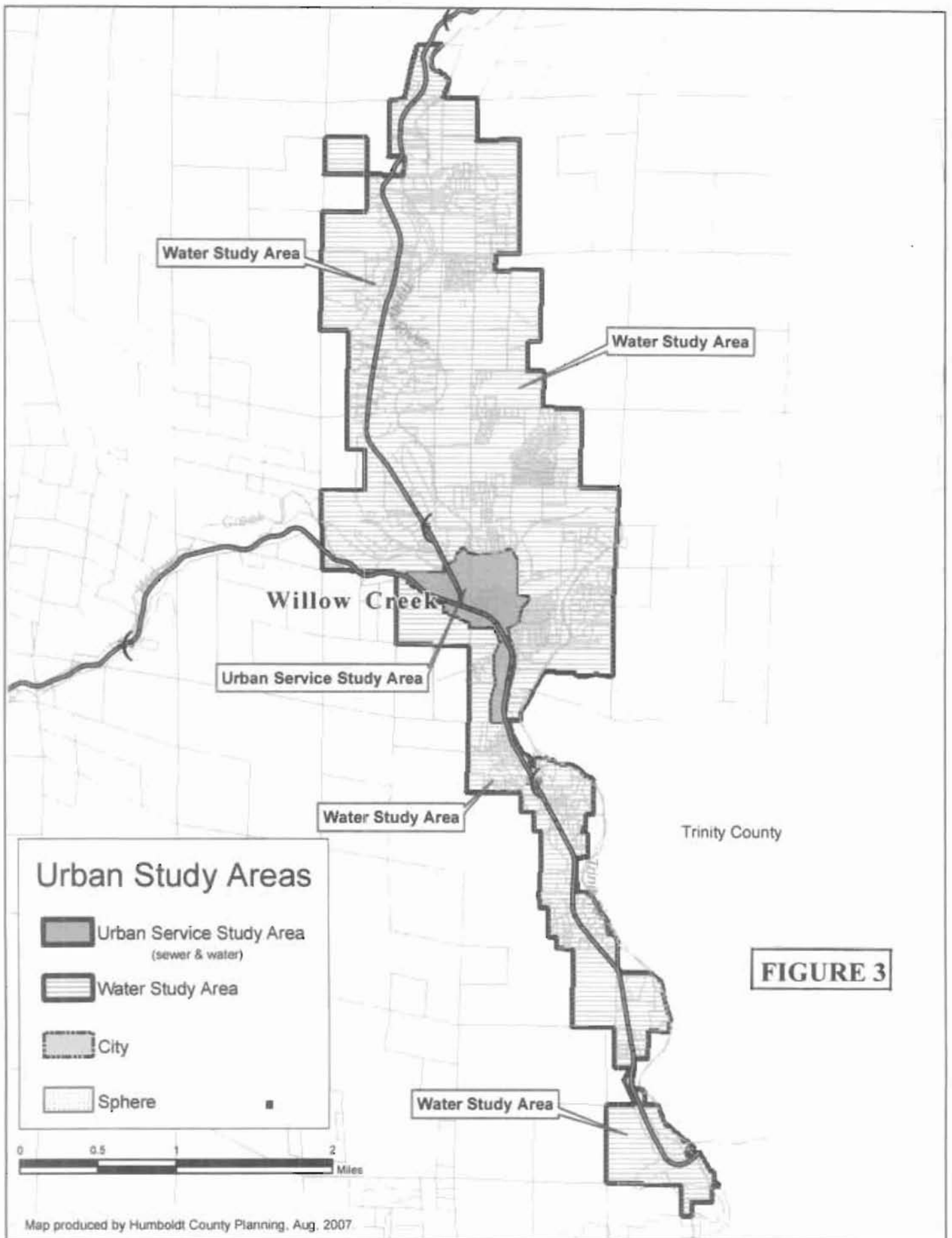


FIGURE 3

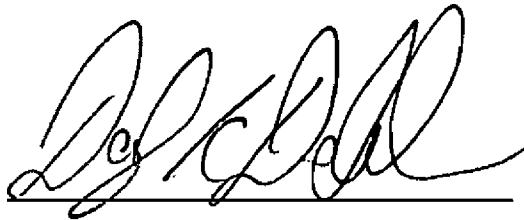
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ENGINEERING REPORT

Willow Creek, CA, FM Channel 258A

The undersigned, whose qualifications are a matter of record before the Commission, hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.

A handwritten signature in black ink, appearing to read 'D. DeLawder', is written over a horizontal line.

Darryl K. DeLawder, President

DeLawder Communications, Inc.

Date: October 9, 2009